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# INNOVATIVE ENVIRONMENTAL PROTECTION: LESSONS FROM THE ARCTIC

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## **Abstract:**

The paper argues that regional environmental governance in the Arctic, specifically the Arctic Council, can offer lessons that might inform governance in other regions in the world. For almost 25 years of continued regional-level work Arctic actors have been testing various approaches, and embracing those that have proven effective. Innovations in Arctic environmental governance have emerged both due to larger politico-legal changes and institutional, internal or reflexive learning. In the complex landscape of multi-level environmental governance, regional organizations need to continuously find their niche, learn and adapt. A discussion on the concept of organizational learning helps to understand the nature of the learning processes. This process is visible in the change of Council's focus from normative activities towards large-scale scientific assessments. The characteristics of the Council that facilitated learning, primarily its structural flexibility, are highlighted.

**Keywords:** Arctic, environmental governance, international environmental law, Arctic Council, learning, epistemic community.

## 1. Introduction

Much scholarly work has been dedicated to proposing enhancements to the Arctic governance arrangements in the light of the changes affecting the region.<sup>1</sup> In pursuing that goal, international legal research on the Arctic has often focused on finding elements of governance used in regions relatively similar to the Arctic and exploring their applicability in the North. Lessons are often drawn from the Antarctic Treaty System or regional seas treaties.<sup>2</sup> This is still a salient undertaking today, both because a new ocean is about to emerge from underneath the quickly melting sea ice of the Arctic Ocean and as there is global interest towards extractive industries in the Arctic. However, the goal of this article is different, since there are good reasons to argue that the governance frameworks that have evolved in the Arctic are of relevance for environmental governance in other regions. .

Arctic-wide co-operation between the eight Arctic states (Norway, Sweden, Finland, Iceland, Denmark, Canada, the United States and the Russian Federation) has engaged in international regional and global environmental governance for almost a quarter of a century. This was first within the format of the Arctic Environmental Protection Strategy (AEPS)<sup>3</sup> and since 1996 as the Arctic Council. One example can be mentioned here to illustrate why the Arctic Council is interesting in this context. Although the Arctic is a peripheral region compared to the world's densely populated areas, it is revealing that the Arctic and Arctic indigenous

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<sup>1</sup> Oran Young, 'If an Arctic Ocean Treaty is Not the Solution, What Is the Alternative?' (2011) 47 Polar Record 327; Timo Koivurova, 'Alternatives for an Arctic Treaty – Evaluation and a New Proposal' (2008) 17 RECIEL 14; Oran Young, 'Whither the Arctic? Conflict or Co-operation in the Circumpolar North' (2009) 45 Polar Record 73; Timo Koivurova and Erik Molenaar, *International Governance and Regulation of the Marine Arctic: Overview and Gap Analysis*, (WWF International Arctic Programme 2009).

<sup>2</sup> Donald Rothwell, 'The Polar Regions and the Development of International Law: Contemporary Reflections and Twenty-First Century Challenges' (2013) 5 Yb of Polar L 233; Rosemary Rayfuse, 'Protecting Marine Biodiversity in Polar Areas Beyond National Jurisdiction' (2008) 17 RECIEL 3 Erik Molenaar, 'Current and Prospective Roles of the Arctic Council System within the Context of the Law of the Sea' (2012) 27 Intl J of Marine and Coastal L 553.

<sup>3</sup> Arctic Environment Protection Strategy (AEPS), 30 ILM 1624 (1991).

peoples are mentioned in the preamble of the global 2001 Stockholm Persistent Organic Pollutant (POP) Convention.<sup>4</sup>

For over two decades, functions and frameworks of the international co-operation in the Arctic have evolved in a partially self-contained manner. As a result, Arctic regional co-operation has developed a relatively unique set of structural and operational characteristics. Thus, some experiences coming from Arctic regional co-operation may prove relevant for other regions and for global governance in general.

Many innovations in international environmental governance have emerged from institutional learning.<sup>5</sup> The format of regional work on environmental protection at the circumpolar level has continued almost unchanged for almost 25 years (through the AEPS and Arctic Council periods), enabling the actors to test various approaches, abandon those that have not worked and embrace those that have proved effective and successful.

The main research question in this paper is what lessons we can draw from the regional inter-governmental governance in the Arctic that might inform other regions of this planet or even other levels of environmental governance. Spanning almost three decades, Arctic co-operation offers an interesting and unique springboard for studying the processes of international institutional learning and for investigating how larger political and legal processes have influenced it.

The article argues that the key feature that a successful regional organization should display is the ability to learn and evolve. The ideal outcome of learning is identifying and redefining – understood as an ongoing process - own niche or positioning within a complex landscape of existing international, national and local environmental decision-making frameworks. As is discussed further, the example of Arctic regional co-operation shows that flexible structure and a lack of rigid, unadaptable internal design can be critical in allowing regional organizations to learn. That also entails finding a balance between strong ownership over the international forum by key players on the one hand and inclusiveness regarding other categories of participants and openness to their input into the work of the organization on the

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<sup>4</sup> Stockholm Convention on Persistent Organic Pollutants (adopted 22 May 2001, entered into force 17 May 2004) 2256 UNTS 119 (Stockholm Convention).

<sup>5</sup> Bernd Siebenhüner, 'Learning in International Organizations' (2008) 8 Global Environmental Politics 92.

other. Furthermore, flexible organizations are capable of adjusting to changes in their international environment, as was the case with the Arctic Council taking on a new role of a catalyst for legally binding agreements. For AEPS and the Arctic Council, the learning process is manifested primarily by the evolution from normative work towards increasing focus on large-scale scientific assessments. Therefore, this evolution is discussed more broadly in this article. Assessments constitute the core area of Council's activity and their relative success was possible due to emergence of an epistemic community (indigenous peoples' representatives, government civil servants and scientists) mustered within the Council's premises. The outcomes of the learning process – the focus on large-scale scientific assessments, the building up of the Arctic epistemic community, and the particular way the assessments are conducted in the Arctic Council – constitute lessons in their own right. These might be useful for other regional forums looking for a viable niche, where they could position themselves most effectively in terms of influence on decision-making at various levels. The article draws on the discussion on learning processes in organizations and the revisiting of the history of the Arctic regional co-operation through the analysis of documents and literature supplemented by personal communication.

The article opens with introductory words, first, with our understanding of a 'learning organization', and second, on the governance setting in the Arctic. Further, we provide an overview of the changing focus – triggered by the learning process – from normative instruments towards large-scale scientific assessments. Moreover, the flexible structure of the Council is emphasized as a feature allowing for the described learning process to occur. The article concludes with highlighting the key features of Arctic Council as an organization capable of reflexive and adaptive learning and accentuating the main lessons potentially useful for other regional environmental forums or organizations.

## **2. Learning as a key feature of successful regional organization**

We argue that in order to be successful, a regional organization located in-between local, national and global decision-making should be able to continuously find its niche and that is possible only if it displays features of a learning organization. A 'learning organization' is an organization where the structure, modes of operation, people involved and dynamics allow for

constant improvement based on self-reflection and adjustment to changing circumstances without undermining the core of the organization's values and identity.<sup>6</sup>

There are numerous ways to define what learning in international organizations constitutes. Bernd Siebenhüner<sup>7</sup> explains organizational learning as 'a change in an organization's practices and strategies caused by a change in the knowledge of an organization on a collective level'. The definition includes the processes of generation, transformation, transmission and diffusion of knowledge inside organizations. Organizational learning entails changes in structures, behaviours and strategies. The direction of learning, its purpose – for example, a more effective influence on decision-making – is the key element of understanding why and how a given organization learns. Adaptive learning (as a result of changing political, social, institutional, situational environment) and reflexive learning (arising from the experience accumulated within the organization) can be seen as ideal forms of learning.<sup>8</sup> While earlier analyses downplay the role of factors internal to the organization focusing rather on the characteristics of the underlying regime,<sup>9</sup> Siebenhüner emphasizes that '[t]he crucial indicator of organizational learning [...] is a change in organizational practices that can be linked to processes of knowledge generation and dissemination within organization'.

A term closely associated with both adaptive and reflexive learning is 'adaptive governance', which could be defined as:

[...] governance [that] connects individuals, organizations, agencies, and institutions at multiple organizational levels. Key persons provide leadership, trust, vision, meaning, and they help transform management organizations toward a learning environment. Adaptive governance systems often self-organize as social networks with teams and

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<sup>6</sup> Ernst Haas, *When Knowledge is Power: Three Models of Change in International Organizations* (University of California Press 1990) 33-34; Haas defines the adaptation as "the ability to change one's behavior so as to meet challenges in the form of new demands without having to reevaluate one's entire programme and the reasoning on which that program depends for its legitimacy".

<sup>7</sup> Siebenhüner, 'Learning' (n 5).

<sup>8</sup> *ibid*, while Haas (n 6) distinguishes between learning and adaptation.

<sup>9</sup> Haas (n 6)

actor groups that draw on various knowledge systems and experiences for the development of a common understanding and policies.<sup>10</sup>

We argue that Arctic regional co-operation displays elements of reflexive and adaptive learning, and thus, could be seen as a case of adaptive governance.

### **3. Background: Arctic Governance**

#### *3.1. The Setting of Arctic Co-operation*

The Arctic is not like Antarctica, a region to which Arctic governance is often compared and where the focus has been on building hard law based international environmental governance.<sup>11</sup> The two polar areas share certain characteristics such as harsh cold climates and unique sun radiation conditions, as well as simple and thereby vulnerable ecosystems. Yet, there are many fundamental differences. The Arctic consists of ocean surrounded by continents, whereas the Antarctic is a continent surrounded by an ocean; the Antarctic has no permanent human habitation, while the Arctic is inhabited.

More importantly, from the viewpoint of environmental protection, the politico-legal bases of the Polar Regions are fundamentally dissimilar. First of all, the setting of territorial sovereignty differs enormously. In the Antarctic, the sovereignty question has been ‘frozen’ via the 1959 Antarctic Treaty<sup>12</sup> and thus territorial claims to sovereignty over the Antarctic have been suspended.<sup>13</sup> In the Arctic, sovereignty (and sovereign rights in the marine areas) plays a crucial role in the governance of the region.

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<sup>10</sup> Cark Folke, Thomas Hahn, Per Olsson, and Jon Norberg, ‘Adaptive Governance of Social-ecological Systems’ (2005) 30 Annual Rev of Environment and Resources 441.

<sup>11</sup> Christopher Joyner, *Governing the Frozen Commons: The Antarctic Regime and Environmental Protection* (Columbia: University of South Carolina Press 1998); Timo Koivurova, ‘Environmental Protection in the Arctic and Antarctic: Can the Polar Regimes Learn From Each Other?’ (2005) 33 Intl J of Legal Information 204.

<sup>12</sup> The Antarctic Treaty (adopted 1 December 1959, entered into force 23 June 1961) 402 UNTS 71.

<sup>13</sup> The Antarctic claims are only ‘frozen’; they have not been withdrawn. See Rothwell (n 2).

In the Arctic,<sup>14</sup> all the levels of law - international, European, national and sub-national, the customary law of indigenous peoples – come into play. Of the eight states, three are federal in structure (the United States, Canada and Russia), with varying division of powers between the regional and federal levels: the State of Alaska in the United States, the three northern territories of Canada and the various federal subjects of the Russian Federation, all of which are areas where also indigenous peoples have been given different powers and rights. Moreover, northern municipalities are key actors in environmental governance and developments occurring in the region. The EU is an important actor in environmental governance both via its own regulations and through participation in international normative processes. Finland and Sweden are Member States of the EU, while Iceland and Norway (with the exception of Svalbard) adopt much EU legislation (including environmental law) owing to the European Economic Area Agreement.<sup>15</sup> Greenland, which itself left the European Communities in 1985, possesses extensive autonomous powers. The Svalbard archipelago has a unique status, established through the international Svalbard Treaty in 1920.<sup>16</sup> The eight Arctic states are parties to a large number of international environmental treaties and other normative instruments and are bound by customary international law. And even further, regions have a number of their own co-operative structures across borders, such as the Barents Regional Council or different trans-boundary water commissions, which contribute to the complexity of international environmental governance in the region.

All of the Arctic land area is firmly under the sovereignty of the Arctic states,<sup>17</sup> and much of the Arctic waters fall under their exclusive maritime jurisdiction. The Central Arctic Ocean remains part of the high seas, as do some so-called ‘holes’ encircled by the exclusive economic zones (EEZ) of the Arctic coastal states. Some parts of the deep sea bed will likely be governed

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<sup>14</sup> The Arctic constitutes ocean and land areas around the North Pole, but there is no universally agreed definition for its southern boundary. Tree line, 10 degrees centigrade July isotherm or Arctic Circle are often used in natural sciences and Arctic Council working groups and particular assessment process (like the Arctic Human Development Report 2004) have adopted their own definitions.

<sup>15</sup> Treaty Concerning the Archipelago of Spitsbergen (pr. Svalbard) (adopted 9 February 1920, entered into force 14 August 1925) 2 LNTS 8; UKTS (1924) 18. Torbjørn Pedersen, ‘The Dynamics of Svalbard Diplomacy’ (2009) 19 *Diplomacy and Statecraft* 236.

<sup>16</sup> Timo Koivurova, Kai Kokko, Sebastien Duyck, Nikolas Sellheim and Adam Stepien, ‘The Present and Future Competence of the European Union in the Arctic’ (2012) 48 *Polar Record* 361.

<sup>17</sup> The only exception as regards sovereignty over land territory is the Hans Island, a barren islet located in the Kennedy Channel portion of Nares Strait between Ellesmere Island (Canada) and Greenland (Kingdom of Denmark). Michael Byers, *International Law and the Arctic* (CUP 2013) 10-16.



by the International Seabed Authority, after the Arctic Ocean coastal states have delineated the outermost limits of their continental shelves. Four of them do that via submissions to the Commission on the Limits of Continental Shelf<sup>18</sup> and one, the United States, on the basis of customary international law, given that the United States is not yet a party to the Law of The Sea Convention. There are some ongoing and potential disputes over the location of maritime borders, in particular that between Canada and the United States in the Beaufort Sea.<sup>19</sup> In general, the Arctic States have resolved their maritime boundary disputes peacefully through negotiations, conciliation and judicial procedures. With such a complex framework of governance – international, EU, national and sub-national levels – it is no wonder that the Arctic-wide co-operation process opted for a soft law based approach, focusing on developing non-legally binding guidelines, recommendations or best practices.

### 3.2. *Arctic International Governance Framework*

The initial idea of Arctic-wide co-operation was laid out by the former Soviet Secretary-General Mikhail Gorbachev in Murmansk in 1987. The Soviet leader proposed that the Arctic states could initiate co-operation in various fields, one being protection of the Arctic environment. This idea was concretized when Finland convened a conference of the eight Arctic states - Canada, Denmark, Finland, Iceland, Norway, the Soviet Union (and later its successor state, the Russian Federation), Sweden, and the United States - in Rovaniemi in 1989 to discuss the issue. In 1991, after two additional preparatory meetings, the delegations lead mostly by the national ministers of environment – with participation of other actors – signed the Rovaniemi Declaration, thereby adopting the Arctic Environmental Protection Strategy (AEPS).<sup>20</sup>

Without the end of the Cold War, a key geopolitical change, a development similar to Rovaniemi process would have been very unlikely. However, it seems that once Arctic co-operation began, it evolved partly as a self-contained regime in terms of its structure and content, as larger geopolitical changes have driven its course only to a limited extent.

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<sup>18</sup> Norway, Kingdom of Denmark (Greenland), Canada, Russian Federation

<sup>19</sup> Byers (n 17).

<sup>20</sup> Monica Tennberg, *The Arctic Council. A Study in Governmentality* (University of Lapland 1998); AEPS (n 3)

The AEPS identified six priority environmental problems threatening the Arctic in particular (persistent organic contaminants, radioactivity, heavy metals, noise, acidification and oil pollution). It also outlined international environmental protection treaties that applied in the Arctic and specified additional actions to counter the identified environmental threats. Four working groups were established: Conservation of Arctic Flora and Fauna (CAFF), Protection of the Arctic Marine Environment (PAME), Emergency Prevention, Preparedness and Response (EPPR) and the Arctic Monitoring and Assessment Programme (AMAP). Three ministerial meetings followed in this first phase of Arctic co-operation, also referred to as the Rovaniemi process. Senior Arctic Affairs Officials (after 1996 Senior Arctic Officials, SAOs), who were representatives of the ministries of foreign affairs of the eight states, co-ordinated the co-operation in-between the ministerial meetings, while the experts in the working groups represented the environmental sector and science. The last AEPS ministerial meeting was held in 1997 and it focused on integrating the AEPS into the structure of the newly established Arctic Council.

The Arctic Council was established as a high-level intergovernmental forum on the basis of a declaration signed by the ministers of foreign affairs of the Arctic states in Ottawa, Canada in September 1996.<sup>21</sup> The founding of the Arctic Council brought initially only minor modifications in the format of Arctic co-operation developed under the AEPS, slightly extending the terms of reference beyond the previous focus on environmental protection. It is important to note that there was not much change in the Arctic co-operation practises following the transition to the Arctic Council from 1996<sup>22</sup> and its fundamental elements – soft law legal status, institutional structure and no permanent funding mechanism– remained the same as in the AEPS. Of particular importance is that the Arctic Council – as an intergovernmental forum – cannot enact any legally binding rules.

The Council was empowered to deal with ‘common Arctic issues, in particular issues of sustainable development and environmental protection in the Arctic.’<sup>23</sup> This potentially yielded a very broad mandate, since ‘common issues’ can include almost any facet of international policy

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<sup>21</sup> The Declaration on the Establishment of the Arctic Council, 35 ILM 1385-1390 (1996) (Ottawa Declaration)

<sup>22</sup> Also, the status of the Arctic Council was made stronger than that of the AEPS, insofar as the Council met at the level of foreign ministries instead of ministries of the environment.

<sup>23</sup> Ottawa Declaration, art 1 (a).

apart from ‘matters related to military security’.<sup>24</sup> Environmental co-operation is now included as a principal focus within the mandate of the Arctic Council, with the four working groups that had started already in the AEPS co-operation continuing under the umbrella of the Council.<sup>25</sup> The second ‘pillar’ of the Council’s mandate is co-operation on sustainable development, which has a working group of its own (SDWG). The Arctic Council has also adopted new programmes related to environmental protection, such as the Arctic Council Action Plan to Eliminate Pollution in the Arctic (ACAP), for which a sixth working group has been founded.<sup>26</sup>

What is unique in the Arctic Council is the role it has given to the region’s indigenous peoples’ organizations. They are defined as Permanent Participants, a distinct category between Council’s members and observers, which have to be consulted before any decision-making. The group of observers is relatively large and consists of inter-governmental and non-governmental organizations, as well as non-Arctic states active in the region.<sup>27</sup>

Before 2007, the Arctic cooperation evolved in relative isolation from the global context and its work was largely unnoticed. This was the time when, as is discussed later in this article, the epistemic community around the Council had emerged and consolidated and when the process of reflexive learning within the Council led to the focus on large scale scientific assessments in its work. This relative isolation has been challenged since 2007. The scientific outlook for Arctic climate change and in particular the melting sea ice of the Arctic Ocean - a development which opened up speculation about new economic and security threats and opportunities in the region - led to change in the international perception of the region. This intensified in summer 2007, when a Russian group planted a Russian flag on the sea bed underneath the North Pole. This act was interpreted by many in the media as a claim on the sea bed and its resources for Russia, triggering an international discussion that an all-out scramble for resources had begun among the Arctic Ocean coastal states. It is now broadly acknowledged that this was a grave misunderstanding: it was no more than an instance of the coastal states

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<sup>24</sup> *ibid* p 3

<sup>25</sup> *ibid* art 1(b)

<sup>26</sup> Recently, the Arctic Council has been implementing several projects outside of the working groups (e.g. Arctic Resilience Report).

<sup>27</sup> Piotr Graczyk, ‘Observers in the Arctic Council—Evolution and Prospects’ (2011) 3 *The Yb of Polar L* 575; Piotr Graczyk and Timo Koivurova, ‘A New Era in the Arctic Council’s External Relations? Broader Consequences of the Nuuk Observer Rules for Arctic Governance’ (2014) 50 *Polar Record* 225.

following the law of the sea and the Law of the Sea Convention, for which purpose they have been actively mapping the continental shelf of the Arctic Ocean.<sup>28</sup> The coastal states argued as much in their Ilulissat Declaration in 2008.<sup>29</sup>

However, because of the perceived scramble for resources, and the resulting international and public attention on Arctic issues, states started to pay more attention to the Arctic Ocean sea ice melting and to possible ways to exploit its hydrocarbon riches or navigational highways.<sup>30</sup> This have also partly influenced the demands placed on the Arctic Council, given that during those times it appeared that intensified co-operation had emerged among an inner circle consisting of the five coastal states (United States, Russia, Canada, Norway and Denmark).<sup>31</sup>

The global attention to the Arctic translated into expressions of interests of various actors and non-Arctic states to take part in the work of the Arctic Council. In its 2013 Kiruna ministerial meeting,<sup>32</sup> the Council accepted China, India, Japan, South Korea, Singapore and Italy as observers.<sup>33</sup> The acceptance of these new observers meant that the matters dealt within the Arctic Council are increasingly taken into consideration worldwide.

The global attention triggered the process of adaptive learning, which was less pronounced earlier in Council's history. More recent structural developments in the work of the Arctic Council have strengthened its capacity and role. With the 2011 Nuuk Declaration, Council's jointly funded permanent secretariat was established in Tromsø, Norway.<sup>34</sup> Another

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<sup>28</sup> Betsy Baker, 'Oil, Gas and the Arctic Continental Shelf: What Conflict?' (2012) 2 Oil, Gas and Energy Law, <[www.ogel.org](http://www.ogel.org)> accessed 28 November 2014; Timo Koivurova, 'Power Politics or Orderly Development? Why Are States "Claiming" Large Areas of the Arctic Seabed' in Sanford Silverburg (ed), *International Law: Contemporary Issues and Future Developments* (Westview Press 2011); Timo Koivurova, 'The Actions of the Arctic States Respecting the Continental Shelf: A Reflective Essay' (2011) 42 Ocean Development & Intl L 211.

<sup>29</sup> *Ilulissat Declaration* (28 May 2008) <[www.arctic-council.org/filearchive/Ilulissat-declaration.pdf](http://www.arctic-council.org/filearchive/Ilulissat-declaration.pdf)> accessed 28 November 2014.

<sup>30</sup> Alun Anderson, *After the Ice: Life, Death, and Geopolitics in the New Arctic* (Smithsonian 2009); Koivurova, 'The Actions' (n 28).

<sup>31</sup> Koivurova, 'Power Politics' (n28).

<sup>32</sup> Kiruna Declaration. (15 May 2013). 8<sup>th</sup> Ministerial Meeting of the Arctic Council, <[www.arctic-council.org](http://www.arctic-council.org)>accessed 28 November 2014.

<sup>33</sup> At the Arctic Council's Kiruna Ministerial Meeting in May 2013, the Council 'received the application of the EU for observer status affirmatively', with a final decision awaiting "implementation", but with being invited to observe Council proceedings as any other observer. At the time of submission of this article, the Canada's objection to granting the EU an observer status in the Council has been lifted and the EU awaits the final implementation of Kiruna decision.

<sup>34</sup> Nuuk Declaration, 7<sup>th</sup> Meeting of the Arctic Council (12 May 2011).

new development is that the Arctic Council has acted as a catalyst for negotiating two international agreements, one on responding to marine oil spills and the other on co-operation in marine and aeronautical search and rescue operations.<sup>35</sup>

#### **4. The Learning Process: Arctic Council's Evolution and Changing Focus**

The core environmental protection activities of Arctic-wide co-operation, in both the AEPS and Arctic Council periods, have progressed unimpeded. The four core working groups (AMAP, CAFF, PAME and EPPR) have been able to work continuously for almost 25 years, allowing for a long-term learning process. We argue that the way the Arctic Council has grown to focus its work on conducting scientific assessments is among the key lessons of Arctic governance and hence it deserves a more detailed discussion.

The role that has gradually evolved as a core task of the Arctic Council is its work to increase knowledge about the circumpolar Arctic in order to influence both national and international policy-making. The valuable outcome is the wealth of science-based<sup>36</sup> information in various formats and the established capacity to compile it for different needs. Over time, the Arctic Council's products have included assessments, overview reports, brochures, guidelines, capacity building projects and numerous technical and progress reports. The results are summarized in declarations produced at the occasion of biannual ministerial meetings, which include recommendations for action.<sup>37</sup>

Since the beginning of the 2000s, the Arctic Council has gradually focused on compiling large-scale regional assessments, such as the 2004 Arctic Climate Impact Assessment (ACIA),<sup>38</sup> the 2009 Arctic Marine Shipping Assessment (AMSA)<sup>39</sup> and the 2013 Arctic Biodiversity

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<sup>35</sup> Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic (signed in Nuuk on 12 May 2011, entered into force 19 January 2013) 50 I.L.M. 1119 (2011) (SAR Agreement); Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response in the Arctic (signed in Kiruna on 15 May 2013), <[www.arctic-council.org/eppr](http://www.arctic-council.org/eppr)> accessed 2 December 2014 (Oil Spills Agreement).

<sup>36</sup> The Arctic Council does not carry out research by itself but uses the most recent research results for its products.

<sup>37</sup> Paula Kankaanpää, 'The Arctic Council – from Knowledge Production to Influencing Arctic Policy Making' (2012) 4 The Yb of Polar L 59.

<sup>38</sup> ACIA (Arctic Climate Impact Assessment). Scientific Report. (2005). Cambridge University Press, <[www.acia.uaf.edu](http://www.acia.uaf.edu)> accessed 18 December 2014.

<sup>39</sup> PAME (Protection of Arctic Marine Environment), 'Arctic Marine Shipping Assessment 2009 Report' (Arctic Council 2009) (AMSA), <[www.pame.is/index.php/projects/arctic-marine-shipping/amsa/amsa-2009-report](http://www.pame.is/index.php/projects/arctic-marine-shipping/amsa/amsa-2009-report)> accessed 18 December 2014.

Assessment (ABA).<sup>40</sup> The intended readership of these assessments is primarily international negotiators and governments rather than local and regional stakeholders. The number and high quality of these assessments have enhanced the Arctic Council's international role and influence.<sup>41</sup>

Until the early 2000s, Arctic issues were considered marginal when compared to global and national politics. As a result, the Council largely 'lived a life of its own'. It was run by people with a distinct personal commitment to, interest in, or passion for the Arctic. A wider epistemic community, which is discussed later in the section, started to shape around the Arctic Council. International trust among the partners enabled this body of 'grass-roots Arctic experts' to develop unique working routines, which today may be seen as a source of strength and an asset for the Council but perhaps in some respects also one of its weaknesses. The existing flexible way to operate may function efficiently with a limited number of people involved, but when the organization grows larger – as it currently does – the need for transparency and clear operational rules increases.

The Arctic Council as an organization has 'learned by doing' and gradually oriented its operations to the production of large-scale assessments, that is, the Council's most effective products.<sup>42</sup> At an early stage, there were efforts towards developing normative documents such as guidelines. Towards the end of 1990s, scientific assessments slowly became the area of specialization of the Arctic Council's activity. The first large-scale assessment was released by AMAP in 1997, *Arctic Pollution Issues: State of the Arctic Environment Report*.<sup>43</sup> After publishing the Arctic Climate Impact Assessment (ACIA) in 2004, assessments have become the key area of Council's activity and have remained so to the present day. The normative activities have not been completely abandoned, and have been partly merged into the assessment work through the development of recommendations.

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<sup>40</sup> CAFF (Conservation of Arctic Flora and Fauna), Arctic Biodiversity Assessment: Status and trends in Arctic biodiversity; Report for Policy Makers; Synthesis (2013), <[www.arcticbiodiversity.is](http://www.arcticbiodiversity.is)> accessed 18 December 2014.

<sup>41</sup> Paula Kankaanpää and Oran Young 'The Effectiveness of the Arctic Council' (2012) 31 Polar Research 17176.

<sup>42</sup> According to a survey conducted by Kankaanpää and Young, *ibid*.

<sup>43</sup> Arctic Monitoring and Assessment Programme, 'Arctic Pollution Issues: A State of the Arctic Environment Report' (1997).

#### 4.1. *Early Normative Activities: Guidelines and Strategies*

When the AEPS was launched, it had undergone a period of ‘soul searching’ to determine what the functions of the AEPS working groups were. For instance, PAME was set up to contribute to the protection of the Arctic marine environment, its priority at the beginning being the implementation of the global soft law arrangement tackling pollution from land-based sources.<sup>44</sup> The working group also produced, for example, the 1997 Arctic Offshore Oil and Gas Guidelines<sup>45</sup> and the 2004 Arctic Waters Oil Transfer Guidelines.<sup>46</sup> EPPR was requested in 1996 to work on an Arctic Guide for Emergency Prevention, Preparedness and Response and it completed the Field Guide for Oil Spill Response in Arctic Waters in 1998.<sup>47</sup> The 1996 Inuvik ministerial meeting encouraged CAFF to create an Arctic strategy to implement the goals of the 1992 Convention on Biological Diversity.<sup>48</sup>

The four original working groups adopted various modes of operation aimed at promoting Arctic environmental protection. As most of the environmental problems identified in the AEPS were already acknowledged on a general level in various international environmental treaties, the working groups were tasked with finding possible gaps and making sure that the vulnerable Arctic environment was adequately taken into account in the international processes, where needed. The article discusses those chosen projects that, in the view of the authors, illustrate well the main activities of the Council and show its evolution.<sup>49</sup>

In 1993, the Task Force on Sustainable Development and Utilization (TFSDU) started its work under the AEPS. However, its work was soon put on hold, owing to the commencement of the negotiations on the establishment of the Arctic Council, which included a plan to create a

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<sup>44</sup> Timo Koivurova and David VanderZwaag, ‘The Arctic Council at 10 Years: Retrospect and Prospects’ (2007) 40 UBC L Rev 137.

<sup>45</sup> Protection of the Arctic Marine Environment (PAME), ‘Arctic Offshore Oil and Gas Guidelines’ (1997, updated), <[www.pame.is/index.php/projects/offshore-oil-and-gas](http://www.pame.is/index.php/projects/offshore-oil-and-gas)> accessed 18 December 2014.

<sup>46</sup> Protection of the Arctic Marine Environment (PAME), ‘Guidelines for the Transfer of Refined Oil and Oil Products in the Arctic Waters’ (2004), <[www.arctic-council.org/eppr/wp-content/uploads/2011/03/TROOP-English-2.pdf](http://www.arctic-council.org/eppr/wp-content/uploads/2011/03/TROOP-English-2.pdf)> accessed 18 December 2014.

<sup>47</sup> Emergency Prevention, Preparedness and Response (EPPR) working group of the Arctic Council, ‘Field Guidelines for Oil Spill Response in Arctic Waters’ (1998), <[www.arctic-council.org/eppr/completed-work/oil-and-gas-products/field-guide-for-oil-spill-response/](http://www.arctic-council.org/eppr/completed-work/oil-and-gas-products/field-guide-for-oil-spill-response/)> accessed 18 December 2014.

<sup>48</sup> Timo Koivurova and Waliul Md Hasanat, ‘The Climate Policy of the Arctic Council’ in Timo Koivurova, E Carina H Keskitalo and Nigel Bankes (eds), *Climate Governance in the Arctic* (Springer 2009) 50, p 63.

<sup>49</sup> Koivurova and VanderZwaag, *ibid*, enumerate a number of projects which the working groups undertook. See also Tennberg (n 20).

new Sustainable Development Working Group. The Task Force had already started to work on some sensitive topics, ranging from harvesting of marine mammals and fur-bearing animals to sustainable use of renewable resources, and had begun to produce Guidelines for Environmental Impact Assessment (EIA) in the Arctic.<sup>50</sup> Unlike most of the TFSDU's other projects, which were put on hold, the Arctic EIA guidelines were completed and adopted in the final ministerial meeting of the AEPS in 1997.

Reflexive learning builds on the appraisal of organization's past performance and, in the case of the Arctic regional cooperation, on the effectiveness and influence of its soft law products. It is difficult to evaluate the impacts of various normative activities undertaken in the working groups. There are no regular evaluation procedures that would allow one to determine how, or if at all, these guidelines, manuals, best practice instruments and other projects have made a difference. Nevertheless, one of the authors of this article examined some of the early normative activities of the AEPS and the Arctic Council; looking specifically at how the Guidelines for Environmental Impact Assessment (EIA) in the Arctic have been implemented and how the CAFF's Circumpolar Protected Areas Network (CPAN) performed.<sup>51</sup>

The Arctic EIA Guidelines<sup>52</sup> were negotiated from 1993 to 1996 in a process to produce guidance on how to conduct EIA in the unique Arctic conditions. The Guidelines were adopted by the Alta ministerial meeting of AEPS with particularly strong wording as to their implementation:

We receive with appreciation the "Guidelines for Environmental Impact Assessment (EIA) in the Arctic" and the "Arctic Offshore Oil and Gas Guidelines" developed under the AEPS, and agree that these Guidelines be applied.<sup>53</sup>

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<sup>50</sup> E Cristina Keskitalo, *Negotiating the Arctic. The Construction of an International Region* (Routledge 2004).

<sup>51</sup> Timo Koivurova, 'Implementing Guidelines for Environmental Impact Assessment in the Arctic' in Kees Bastmeijer and Timo Koivurova (eds), *Theory and Practice of Transboundary Environmental Impact Assessment* (Martinus Nijhoff 2008); Timo Koivurova, 'Governance of Protected Areas in the Arctic' (2009) 5 Utrecht LR 44.

<sup>52</sup> Arctic Environmental Protection Strategy (AEPS), 'Guidelines for Environmental Impact Assessment (EIA) in the Arctic,, (Finnish Ministry of the Environment 1997), <[www.unece.org/fileadmin/DAM/env/eia/documents/EIAGuides/Arctic\\_EIA\\_guide.pdf](http://www.unece.org/fileadmin/DAM/env/eia/documents/EIAGuides/Arctic_EIA_guide.pdf)> accessed 18 December 2014.

<sup>53</sup> Alta Declaration, Ministerial Meeting of the Arctic Environmental Protection Strategy, Para 3 (13 June 1997), <[library.arcticportal.org/1271/1/The\\_Alta\\_Declaration.pdf](http://library.arcticportal.org/1271/1/The_Alta_Declaration.pdf)> accessed 15 December 2014.



After the adoption of the Guidelines, there was no follow-up other than the establishment of a website, which included information about national EIA procedures but without any commitment to continue maintenance or updating of the information. One reason why these Guidelines gradually fell into oblivion was that they were a product of the TFSDU, the task force that, in contrast to the AEPS working groups, was not continued under the Arctic Council. The Guidelines never made their way into the minds of those who implement EIA in the Arctic, let alone influenced how EIAs are implemented.<sup>54</sup> Moreover, EIA, as a matter of mostly terrestrial concern, was considered a domestic issue by actors involved in the EIA processes.<sup>55</sup>

Another good example here is the CAFF working group, for which the flagship project used to be the Circumpolar Protected Area Network (CPAN),<sup>56</sup> a pan-Arctic idea to promote protected areas in the eight Arctic countries. CAFF published, inter alia, extensive reports on protected areas in each Arctic state and made an effort to compare their statuses. However, the CPAN was seen by the Arctic Council member states as encroaching too much on an issue that is fully regulated in national law.<sup>57</sup> Moreover, almost all Arctic states (with the exception of the USA) are parties to the Convention on Biological Diversity, which has a process for reporting how nation-states have advanced their protected areas.<sup>58</sup> CPAN was thus overlapping with international processes rather than contributing to these, such as the AMAP assessment work, and resulted in what was perceived as an unnecessary administrative reporting burden. Consequently, CPAN was discontinued in 2010,<sup>59</sup> as it gradually evolved and fed into the later emphasis on biodiversity monitoring and assessment, a focus reflected, for instance, in the recently completed 2013 Arctic Biodiversity Assessment. This recent assessment is to be followed-up by an implementation plan designed to support and implement the recommendations. A dedicated congress was organized in December 2014 in order to bring

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<sup>54</sup> Koivurova, 'Implementing Guidelines' (n 51).

<sup>55</sup> In retrospect, the guidelines were premature, as they were drafted before the time of increased commercial and industrial interest and activity in the Arctic region in the second half of last decade.

<sup>56</sup> CAFF (Conservation of Arctic Flora and Fauna Working Group), 'Circumpolar Protected Areas Network Strategy and Action Plan' (1995), <[www.caff.is](http://www.caff.is)> accessed 15 December 2014.

<sup>57</sup> Koivurova, 'Governance' (n 51).

<sup>58</sup> Alexander Gillespie, *Protected Areas and International Environmental Law* (Martinus Nijhoff 2007).

<sup>59</sup> CAFF website at <[www.caff.is/protected-areas-cpan/about-cpan](http://www.caff.is/protected-areas-cpan/about-cpan)> accessed 15 December 2014.

various stakeholders together and to enhance the national and international implementation of the Arctic biodiversity recommendations.<sup>60</sup>

There are more positive experiences on record, namely the Offshore Oil and Gas Guidelines prepared by PAME.<sup>61</sup> It is a living instrument as the Guidelines have already been revised twice. A good argument can be made that the Guidelines are used at least in Greenland.<sup>62</sup>

In general, however, we do not know how any of these guidelines or other normative instruments are applied in practice. Clearly, one of the shortcomings of the normative work within the Arctic Council has been lack of regular evaluation procedures in place, a feature, as discussed later, is important for the process of reflexive learning within organizations.

#### 4.2. *Arctic Council Niche: Influencing through Scientific Assessments*

Compared to the ambiguous effectiveness of the Arctic Council's early normative activities, large-scale scientific assessments present themselves as the clearest way in which the Council has been able to influence the evolution of regional and global international environmental policies and treaties.

The most successful of all the early efforts was that of AMAP, which produced the already mentioned extensive 'State of the Arctic Environment Report' in 1997.<sup>63</sup> The assessment identified several pollution threats to the Arctic environment, such as persistent organic pollutants (POPs) and mercury, which originate mainly from sources outside of the region. In a survey conducted among the members of the Arctic Council's wider epistemic community,

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<sup>60</sup> Arctic Biodiversity Assessment (ABA) website (Conservation of Arctic Flora and Fauna working group of the Arctic Council), <[www.arcticbiodiversity.is](http://www.arcticbiodiversity.is)> accessed 18 December 2014. The practical outcomes in terms of drawing the implementation plan are unknown as of December 2014.

<sup>61</sup> Arctic Council Protection of the Arctic Marine Environment Work Group, 'Arctic Offshore Oil and Gas Guidelines' (2009), <[www.govmin.gl/images/stories/petroleum/Arctic\\_Offshore\\_Oil\\_and\\_Gas\\_Guidelines\\_2009.pdf](http://www.govmin.gl/images/stories/petroleum/Arctic_Offshore_Oil_and_Gas_Guidelines_2009.pdf)> accessed 25 May 2009.

<sup>62</sup> Betsy Baker, 'Arctic Offshore Oil and Gas Guidelines in Greenland and Russian Federation' (White Paper No. 5, Vermont Law School Institute for Energy and the Environment prepared for the Inuit Circumpolar Council, February 2011), <[www-assets.vermontlaw.edu/Assets/iee/Baker\\_ArcticOffshoreOil5.pdf](http://www-assets.vermontlaw.edu/Assets/iee/Baker_ArcticOffshoreOil5.pdf)> accessed 25 May 2014, 30-37

<sup>63</sup> Arctic Monitoring and Assessment Programme (n 43), see also John English, *Ice and Water: Politics, Peoples, and the Arctic Council* (Allen Lane 2013).

AMAP has been perceived as the most appreciated working group and its products as most effective next to the Arctic Climate Impact Assessment (ACIA).<sup>64</sup>

The 1997 AMAP assessment can be considered a watershed event in environmental governance in that the scientific information that it compiled enabled a concrete outcome for international environmental protection. POPs, defined as a threat in the assessment, end up in the Arctic from southern industrial regions via prevailing northerly winds and ocean circulation. Therefore, in order to address the POPs issue, the eight nation-states and permanent participants had to try to influence global levels of governance. As has been demonstrated by Downie and Fenge,<sup>65</sup> it was the science that AMAP compiled that prompted joint action by the member states of the Arctic Council and its permanent participants.

Particularly compelling seemed to be the role of the permanent participants, such as the Inuit Circumpolar Conference (ICC – since 2006 renamed as the Inuit Circumpolar Council). They were able to concretize the impacts of POPs: although Arctic peoples do not use POPs, the substances are found in the large marine mammals which many peoples harvest. A particularly convincing argument in encouraging the progress of negotiations were large concentrations of POPs in pregnant Inuit women, potentially damaging the foetus and having long-term adverse effects of human health, and thus, being harmful for future generations.<sup>66</sup> This relevant finding, the scientific information compiled by AMAP in general, and the coalitions between Arctic Council member states all influenced the negotiations on a protocol for the UNECE Convention on the Long-Range Transboundary Air Pollution (LRTAP) on POPs.<sup>67</sup> Even more importantly, these developments influenced also the successful conclusion of the 2001 Stockholm POPs Convention.<sup>68</sup> Here also the role of actors such as ICC was crucial. The risks to the Arctic are highlighted in the Convention's preamble:

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<sup>64</sup> Kankaanpää and Young (n 41).

<sup>65</sup> David Leonard Downie and Terry Fenge (eds), *Northern Lights Against POPs: Combatting Toxic Threats in the Arctic* (McGill-Queen's University Press 2003).

<sup>66</sup> *ibid.*

<sup>67</sup> Convention on the Long-Range Transboundary Air Pollution, 2230 UNTS 79 (UN Economic Commission for Europe, Geneva, 13 November 1979), The Protocol (LRTAP Convention) on Persistent Organic Pollutants (POPs) (Aarhus, 24 June 1998). Entered into force on 23 October 2003.

<sup>68</sup> Stockholm Convention (n 4).

Acknowledging that the Arctic ecosystems and indigenous communities are particularly at risk because of the biomagnification of persistent organic pollutants and that contamination of their traditional foods is a public health issue.<sup>69</sup> (underlining original)

It was symbolic that the chair of the Stockholm negotiations kept a gift on his table from the Arctic indigenous peoples<sup>70</sup> depicting an Inuit mother and her baby. The ICC and the AMAP continue to play various roles in the implementation phase of the Stockholm Convention. In particular, AMAP provides data for evaluating the effectiveness of the Convention and for the process of screening so-called candidate POPs (art. 8), the work in which the ICC is also involved.<sup>71</sup>

The Arctic Council and actors closely associated with the Council have had a similar type of influence in creating a global policy and law regarding mercury. The Council's influence on the 2013 Minamata Mercury Convention<sup>72</sup> (not yet in force) deserves here a more detailed study, as the role of the Arctic Council has not yet been explored in this negotiation process.<sup>73</sup> The AMAP 1997/1998 synthesis report<sup>74</sup> served as an early basis for action, since it confirmed the problems that mercury causes when it is deposited in the Arctic environment and in the traditional diets of Arctic indigenous peoples. Interviewees from AMAP and ICC emphasised that the role of the Arctic Council was crucial in triggering the process leading to the conclusion of the Convention.<sup>75</sup>

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<sup>69</sup> *ibid*, Preamble, 3<sup>rd</sup> para.

<sup>70</sup> Presented by Sheila Watt-Cloutier from the ICC, Downie and Fenge (n 65).

<sup>71</sup> The ICC is involved in the screening process through the participation in the work of the POP Review Committee meetings, where the POP candidates are reviewed and recommendations are put forward to the Conference of the Parties. The ICC also communicates to AMAP and the Canadian Northern Contaminants Program (NCP) management and scientists the outcomes of those meetings, and they ask scientists for specific data that is then being used in the review of the chemicals. E-mail from Morten Skovgård Olsen, Chair of AMAP to Timo Koivurova (15 May 2014) and from Eva Kruemmel, Senior Policy Advisor, ICC (Canada Office) to Timo Koivurova (21 May 2014).

<sup>72</sup> Minamata Convention on Mercury (adopted 10 October 2013 at Kumamoto), <[www.mercuryconvention.org](http://www.mercuryconvention.org)> accessed 15 December 2014.

<sup>73</sup> For a general analysis, see Duncan French and Lavanya Rajamani, 'Climate Change and International Environmental Law: Musings on a Journey to Somewhere' (2013) 25 JEL 437.

<sup>74</sup> Peter Outridge and Rune Dietz (Assessment Leads), 'AMAP Assessment 2011: Mercury in the Arctic' (Arctic Monitoring and Assessment Programme 2011), <[www.amap.no/documents/doc/amap-assessment-2011-mercury-in-the-arctic/90](http://www.amap.no/documents/doc/amap-assessment-2011-mercury-in-the-arctic/90)> accessed 15 December 2014.

<sup>75</sup> An interviewee from AMAP stated that Grid-Arendal (based in Norway and affiliated with UNEP) supported AMAP in putting the mercury issue in the agenda of the UNEP Governing Council (Email from the Deputy Executive Secretary of AMAP, Simon Wilson to Timo Koivurova (22 May 2014).

The Arctic Council, in its 2000 Barrow Ministerial Declaration, urged the United Nations Environment Programme (UNEP) to conduct ‘a global assessment of mercury that could form the basis for appropriate international action in which the Arctic States would participate actively’.<sup>76</sup> This was cited by the UNEP Governing Council when it decided in its 2001 session to carry out such an assessment.<sup>77</sup> Arctic Council actors remained intensely engaged throughout the process. Their first contribution was as members of an ad hoc Open-Ended Working Group (OEWG) of government and stakeholder representatives. It was set up by UNEP’s Governing Council to review and assess options for enhanced voluntary measures and new or existing international legal instruments for addressing the global challenges posed by mercury. The OEWG produced a report for submission to the UNEP Governing Council recommending two possible actions, either a new free-standing, legally binding mercury convention or enhanced voluntary measures.<sup>78</sup>

Eventually, the treaty option was chosen and UNEP set up the Intergovernmental Negotiation Committee (INC), which held five meetings between 2010 and 2013. Throughout the negotiations, AMAP supplied the Committee with technical reports, for example, dealing with atmospheric emission inventories.<sup>79</sup> The ICC was also represented at the INC meetings, both as a part of the Canadian delegation (ICC Canada) and as an independent observer (mostly the Greenlandic branch of ICC). The ICC made good use of both the AMAP assessment and the data generated by the Canadian Northern Contaminants Program, and in interventions as independent observers pointed to the need to reduce mercury levels in the environment. Motivating this position was the fact that mercury greatly affects the Inuit. In some cases, the ICC cited levels of mercury exceeding those reported for the Inuit in the AMAP Human Health Assessment from 2009 and in the AMAP Mercury Assessment from 2011.<sup>80</sup> According to

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<sup>76</sup> Barrow Declaration, 2<sup>nd</sup> Ministerial Meeting of the Arctic Council (13 October 2000) para 13.

<sup>77</sup> See United Nations Environment Programme, ‘Report of the Governing Council on the work of its twenty-first session’ (5-9 February 2001), Section 21/5 ‘Mercury Assessment’, 27-28, <[www.unep.org/gc/gc21/Documents/K0100275-E-GC21.doc](http://www.unep.org/gc/gc21/Documents/K0100275-E-GC21.doc)> accessed 15 December 2014. See also the report of the Governing Council, where Finland, on behalf of the Arctic Council, ‘highlighted the mutually beneficial partnership between UNEP and the Arctic Council, and called on UNEP to initiate a global assessment on mercury’. See United Nations Environment Programme, ‘Earth’ (2001) 16 Negotiations Bulletin 2.

<sup>78</sup> UNEP, Open-Ended Working Group, Final Report (2009) GC-25/GMEF.

<sup>79</sup> Verified by the ICC participant in the INC (personal communication with Timo Koivurova).

<sup>80</sup> E-mail from Eva Kruemmel, Senior Policy Advisor, ICC (Canada Office) to Timo Koivurova (21 May 2014).

AMAP representative,<sup>81</sup> the AMAP's own mercury assessments (and especially the most recent 2011 Assessment of Mercury in the Arctic<sup>82</sup>), to which ICC experts contributed, were used effectively in the INC negotiations with active participation of Canada and the ICC during the Committee meetings. Moreover, other indigenous peoples grouped within the Global Indigenous Peoples' Caucus, with the prominent role of ICC and in cooperation with environmental NGO platforms – all contributing to the work within the INC.<sup>83</sup>

Moreover, representatives of the respective Arctic Council chair countries made interventions at the INC meetings, pointing to the particular vulnerability of the Arctic and its indigenous peoples. Overall, as was the case with the negotiation for the Stockholm POPs Convention, there was a visible effort by the Arctic Council countries. The Arctic Council actors played an important role,<sup>84</sup> especially in initiating the process, albeit they were comparatively not as effective as they had been in negotiating the Stockholm Convention. Eventually, the Minamata Convention was concluded in November 2013, with the following preambular paragraph on the Arctic:

Noting the particular vulnerabilities of Arctic ecosystems and indigenous communities because of the biomagnification of mercury and contamination of traditional foods, and concerned about indigenous communities more generally with respect to the effects of mercury[.]<sup>85</sup>

AMAP assessments represent a more direct policy influence on international normative processes. The Arctic Climate Impact Assessment (ACIA)<sup>86</sup> published in 2004/2005 can be seen as a key example of a different kind of interconnection between assessments and policy. The ACIA had very limited concrete influence on global and national climate law and policy. The Arctic Council occasionally issues statements to the conference of parties of the climate regime, but these are presented at the margins of the conferences and have not been able to influence

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<sup>81</sup> *ibid*

<sup>82</sup> Arctic Monitoring and Assessment Programme. AMAP Assessment 2011: Mercury in the Arctic. AMAP, Oslo. 2011, <[www.amap.no/documents/doc/amap-assessment-2011-mercury-in-the-arctic/90](http://www.amap.no/documents/doc/amap-assessment-2011-mercury-in-the-arctic/90)> accessed 18 December 2014.

<sup>83</sup> E-mail from Simon Wilson, AMAP Deputy Executive Secretary to Timo Koivurova (21 May 2014).

<sup>84</sup> As emphasized by Simon Wilson (AMAP) and Eva Kruemmel (ICC). E-mail correspondence with Timo Koivurova (21 May 2014).

<sup>85</sup> Minamata Convention (n 72) Preamble.

<sup>86</sup> ACIA (n 38).

climate policy.<sup>87</sup> However, the ACIA did play a policy- and discourse- shaping role both within the region and to some extent globally. The ACIA included policy recommendations for various levels of environmental governance and has in general increased awareness of climate change challenges for Arctic indigenous peoples. Moreover, ACIA experts were at the same time members of the Intergovernmental Panel on Climate Change (IPCC).

The Arctic Council approved the plan for the ACIA during the US chair-period (1998 to 2000) and the main findings were released in 2004. These included rapid rate of warming and its global implications, impacts on ecosystems, reduced sea ice potentially improving access to transport routes and resource extraction, and implications for Arctic communities and their infrastructure.<sup>88</sup> One example of translating these findings into concrete action was the Inuit petition against the United States to the Inter-American Commission on Human Rights for breaching the human rights of the Inuit through the country's irresponsible climate policy.<sup>89</sup> Although formally unsuccessful, the petition had an important role in raising public awareness of the Arctic climate change.

The ACIA represented also an important step in the evolution of the Arctic Council and the perception of its role in the Arctic governance. Since no other organization produced such comprehensive information for governing the Arctic's vulnerable environment, the threats to which come mostly from outside the region, a niche for the Arctic Council had emerged. The ACIA highlighted that scientific assessments combined with recommendations constitute the most effective means for the Arctic Council to influence behaviour on various levels of governance. Consequently, from the ACIA onwards, the work of the Council has increasingly been geared to making large-scale scientific assessments, such as the 2007 Oil and Gas

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<sup>87</sup> Sébastien Duyck, 'Which Canary in the Coalmine? The Arctic in the International Climate Change Regime' (2012) 4 The Yb of Polar L 583; Annika Nilsson, *A Changing Arctic Climate: Science and Policy in the Arctic Climate Impact Assessment* (Linköping University 2007) 226-227.

<sup>88</sup> ACIA, 'Impacts of a Warming Arctic: ACIA Overview Report' (Arctic Climate Impact Assessment, CUP 2004) 10-11.

<sup>89</sup> Hari Osofsky, 'Inuit Petition as a Bridge? Beyond Dialectics of Climate Change and Indigenous Peoples' Rights' (2007) 31 American Indian L R 675; Timo Koivurova, 'International Legal Avenues to Address the Plight of Victims of Climate Change: Problems and Prospects' (2007) 22 J of Env L and Litigation 267.

Assessment,<sup>90</sup> the 2009 Arctic Marine Shipping Assessment (AMSA)<sup>91</sup> and the 2013 Arctic Biodiversity Assessment.<sup>92</sup>

The ACIA also played a role in focusing Council's activities in terms of their scope and content. The working groups built on the dramatic findings of ACIA and emphasized climate change-related questions, which had not been the case before 2004.<sup>93</sup> Various projects addressed questions of economic opportunities or risks climate change would entail (Arctic Marine Shipping Assessment), how the region could adapt to the anticipated changes (Adaptation Actions for a Changing Arctic, AACA),<sup>94</sup> to examine changes in the ecosystems (ABA) and to continue to compile the most current climate research information on snow, water, ice and permafrost in the Arctic (SWIPA).<sup>95</sup> SWIPA and AACA are also good examples of how the organization of assessment work within the Arctic Council has developed over time. Rather than regularly preparing successive major reports on a given wide topic, the Council takes up specific issues and after completion of 'umbrella' assessments (such as ACIA or AMSA) it follows them up with more focused studies.<sup>96</sup>

In their policy-shaping role, the large-scale scientific assessments have also served as tools in constructing a 'common Arctic reality'. This comprises a set of shared assumptions on what the priorities are in Arctic policy-making: in the Arctic states in general, in international Arctic science policy and especially in the environmental protection in the region. This realization is of increasing relevance, given that a number of states recently have become observers in the Arctic Council. One may hope that the involvement in the work of the Council will convey the understanding of the common reality developed within the Arctic Council to

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<sup>90</sup> Arctic Monitoring and Assessment Programme, Oil and Gas Assessment (2007) <[www.amap.no/oil-and-gas-assessment-oga](http://www.amap.no/oil-and-gas-assessment-oga)> accessed 15 December 2014.

<sup>91</sup> PAME (AMSA) (n 39).

<sup>92</sup> CAFF (n 40).

<sup>93</sup> Koivurova and VanderZwaag, 'The Arctic Council' (n 44).

<sup>94</sup> Arctic Council, 'Adaptation Actions for a Changing Arctic', Arctic Monitoring and Assessment Arctic Council Working Group, <[www.amap.no/adaptation-actions-for-a-changing-arctic-part-c](http://www.amap.no/adaptation-actions-for-a-changing-arctic-part-c)> accessed 15 December 2014.

<sup>95</sup> See the final report, Arctic Monitoring and Assessment Programme, Arctic Climate Issues 2011: Changes in Arctic Snow, Water, Ice, Permafrost (Arctic Council, 2011) <[www.amap.no/swipa](http://www.amap.no/swipa)> accessed 15 December 2014.

<sup>96</sup> The case was similar for example with the Arctic Human Development Report, which was followed by Arctic Social Indicators and by the AHDR II (to be published by the end of 2014), which instead of reassessing human development highlighted main changes since 2004., 'Arctic Human Development Report' (Stefansson Arctic Institute – S AI, Arctic Council 2004); Arctic Social Indicators Project at SAI website; Arctic Human Development Report II, Stefansson Arctic Institute, <[www.svs.is](http://www.svs.is)> accessed 18 December 2014.



external actors (e.g. China, Japan, Korea and India); and thus, sensitize them to the environmental problems the region is facing or, at the very least, countering still prevalent narratives suggesting the notion of scramble for resources in the region. As the Arctic is fraught with problems that have their source in other regions, the involvement of non-Arctic states could improve the potential for progress in global decision-making that is crucial for the protection of the Arctic environment. The Arctic Council and its assessment work can play such a role.

The Arctic Council assessments can be influential through their scientific findings and clear messages they deliver to the policy-makers, but a more direct mode of connecting these findings with policy-making is via developing recommendations. The consecutive assessments, starting from AMAP's work in the late 1990s and particularly visible in the cases of the ACIA and AMSA, include recommendations built on assessments findings and being addressed to various levels of policy-making in the region and internationally, albeit primarily to influence the actions by Arctic states. These recommendations are adopted first by the SAOs and then by the biennial ministerial meetings.

As already mentioned, one of the principal long-standing concerns in the AEPS and the Arctic Council is whether soft law normative instruments – including policy recommendations – make their way into practice and, if so, to what extent.<sup>97</sup> Unfortunately, the Arctic Council does not systematically monitor how recommendations are implemented. There is one important exception, as the PAME working group has established a process to follow up on the recommendations of the AMSA.<sup>98</sup> Moreover, a recent May 2014 evaluation of the United States Government Accountability Office Report to Congressional Requesters provides an account of how Arctic Council recommendations have been implemented in the United States. The picture is generally bleak. There is no 'process to review or track progress the US agencies have made

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<sup>97</sup> Waliul Hasanat, 'Towards Model Arctic-wise Environmental Cooperation Combating Climate Change' (2009) 20 *Yb of Intl Env L* 122.

<sup>98</sup> PAME, 'Status on Implementation of the AMSA 2009 Report Recommendations' (Arctic Council May 2011); PAME, 'Status on Implementation of the AMSA 2009 Report Recommendations' (Arctic Council May 2013), <[www.pame.is](http://www.pame.is)> accessed 15 December 2014; the next implementation report is to be published in 2015. In addition, there are a number of follow-up or AMSA-connected activities within the Arctic Council such as the Arctic Indigenous Marine Use Survey, a process originating directly from the AMSA recommendations (Recommendation IIA) (see PAME website, <[www.pame.is](http://www.pame.is)> accessed 15 December 2014). A major project, envisaged already in the 2004 Arctic Marine Strategy Plan of the Arctic Council, together with AMSA is the Arctic Ocean Review project 2009-2013, <[www.aor.is](http://www.aor.is)> accessed 15 December 2014.

towards implementing'<sup>99</sup> the recommendations. Therefore, the administration faces 'challenges planning for and prioritizing future actions to address Arctic issues'. As the recommendations coming from the Arctic Council are 'broad and numerous', there would be a need to 'more clearly specify and prioritize recommendations, but the Council does not have guidelines for doing so'.<sup>100</sup> Insufficient understanding of the influence that recommendations have on policy-making is among the main shortcomings within the Council's activities and constitutes a limitation on the development of its assessment work. It is hoped that experiences of AMSA would translate into learning process for other working groups and assessment projects. The already mentioned Arctic Biodiversity Assessment is here a good example, as it envisages a process of identifying specific ways of implementing the recommendation, e.g. by organizing high-level meetings resulting potentially in a follow-up process.<sup>101</sup> WWF (Worldwide Fund for Nature), one of the most active non-state observers in the Arctic Council, proposed that the ABA process should be strengthened by national implementation plans and clear steps for monitoring of the implementation progress.<sup>102</sup> The environmental organization sees such a process as needed for all Council's recommendations and decisions and places hope in the US chairmanship of the Arctic Council to be active in this regard.<sup>103</sup> It will be indeed interesting to see if the ongoing learning process within the Council leads to development of stronger implementation and follow-up frameworks.

#### 4.3. *The Emergence of Arctic Council's Wider Epistemic Community*

Success in the assessment work within the Arctic Council was made possible by the emergence of an epistemic community of dedicated scientists, policy-makers, indigenous representatives and NGO activists. It was this epistemic community that allowed the Council to

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<sup>99</sup> The Executive Summary, United States Government Accountability Office Report to Congressional Requesters, 'Better Direction and Management of Voluntary Recommendations Could Enhance U.S. Arctic Council Participation' (May 2014) Arctic Issues, <[www.gao.gov/assets/670/663245.pdf](http://www.gao.gov/assets/670/663245.pdf)> accessed 16 December 2014.

<sup>100</sup> Ibid.

<sup>101</sup> Arctic Biodiversity Assessment (ABA) website (Conservation of Arctic Flora and Fauna Working Group of the Arctic Council), <[www.arcticbiodiversity.is](http://www.arcticbiodiversity.is)> accessed 16 December 2014.

<sup>102</sup> Marc-Andre Dubois and Clive Tesar, 'Making It Stick – A New Approach to Implementing Arctic Council Decisions and Recommendations', Arctic Yb 2014, <[www.arcticyearbook.com](http://www.arcticyearbook.com)> accessed 16 December 2014.

<sup>103</sup> Ibid.

achieve significant results – especially when compared to limited resources – and to build a good reputation and legitimacy for the assessments.

Peter Haas defines an epistemic community as ‘a network of professionals [from a variety of disciplines and backgrounds] with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area’.<sup>104</sup> The Arctic Council has succeeded in engaging a number of dedicated Arctic experts from around the circumpolar North and beyond, and thus, building a strong epistemic community (indigenous peoples’ representatives, government civil servants and scientists). As we discussed earlier, this allowed the forum to conduct major assessment projects with fairly limited financial resources. The Arctic Council’s flexible soft law format enabled the extended epistemic community to work together in pushing for a common goal – protecting the Arctic environment from outside environmental threats, whether that is POPs or mercury.

Indigenous traditional knowledge holders and indigenous organizations have been a part of ‘a common policy enterprise – that is, a set of common practices associated with a set of problems to which their professional competence is directed, presumably out of the conviction that human welfare will be enhanced as a consequence’ – one of Haas’s criteria for an epistemic community.<sup>105</sup> This was the way the indigenous peoples’ organizations and other members of the extended epistemic community participated in the policy processes for the POPs Convention.

The degree of engagement of scientists and indigenous participants in AEPS and Arctic Council projects can be attributed specifically to the fact that the 1991 AEPS chose to focus on environmental protection. Moreover, from early on the key activity was carrying out the AMAP assessment work, which came to serve as a blueprint for how to involve scientists and experts in Council’s activities.

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<sup>104</sup> Peter Haas, ‘Introduction: Epistemic Communities and International Policy Co-ordination’, in Peter Haas (ed), *Knowledge, Power, and International Policy Co-ordination* (University of South Carolina Press 1992)

<sup>105</sup> The other identified characteristic features are: “(1) a shared set of normative and principled beliefs [...]; (2) shared causal beliefs [...]; (3) shared notions of validity- that is, intersubjective, internally defined criteria for weighing and validating knowledge in the domain of their expertise”. See Haas (n 105) 3.

## 5. Making the Learning Process Possible: Flexible and Adaptive Structure

The initial design for the Arctic Environmental Protection Strategy (AEPS, 1991-1997) kept the co-operation between nation-states at a relatively weak level of ambition, which was manifested in the exclusive focus on environmental issues, based on soft law instruments and operating without a secretariat or own budget. Nevertheless, we argue that it is exactly the institutional structure and the soft law mechanism of the Arctic regional co-operation, together with the commitment of involved experts and officials that have made the AEPS and then Council a relevant actor in environmental governance in the Arctic.<sup>106</sup> The marginal position of the Arctic vis-à-vis global trends and the relatively limited number of people involved in the work of the Arctic Council enabled trust-building and bottom-up evolution of the Council's working structures and practices, which have contributed to its success.

The structure of Arctic-wide co-operation reflected the aforementioned fairly low level of commitment.<sup>107</sup> As emphasised in the 1991 AEPS document,<sup>108</sup> there already is a dense network of global and regional international environmental treaties that are applicable to the Arctic, not to mention EU law, national regulations and sub-national level governance. In the midst of all these different layers of environmental governance, it seems that the institutional design of the AEPS and the Arctic Council ensures that the Council keeps on developing by engaging with, and reflecting on, all the regulation and governance that already applies to the Arctic. A good example is the currently negotiated IMO's Polar Code,<sup>109</sup> together with all the relevant IMO treaties that the Arctic Council (and its various working-groups) need to continuously take into account while developing its plans for the future. Even though the structure of the Arctic-wide co-operation has been consolidated in recent years, for instance by establishing a permanent secretariat, the foundations have remained the same, including a soft law basis and the same operative institutional format. In fact, it is this flexible soft law character that has enabled the Arctic Council to avoid one of the problems that established inter-governmental organizations

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<sup>106</sup> Kankaanpää and Young 'The Effectiveness of the Arctic Council' (n 41).

<sup>107</sup> Koivurova and VanderZwaag (n 44); Timo Koivurova, 'Limits and Possibilities of the Arctic Council in a Rapidly Changing Scene of Arctic Governance' (2009) 46 Polar Record 3.

<sup>108</sup> AEPS (n 3).

<sup>109</sup> International Maritime Organizations, 'Shipping in Polar Waters', <[www.imo.org/MediaCentre/HotTopics/polar/Pages/default.aspx](http://www.imo.org/MediaCentre/HotTopics/polar/Pages/default.aspx)> accessed 18 December 2014. The safety part of the binding Polar Code (constituting the amendments to SOLAS Convention) has been adopted in November 2014, the environmental protection part (connected to MARPOL) is expected to be adopted in 2015.

encounter when they need to distinguish their internal from their external affairs. In international law, the law applicable to the internal affairs of inter-governmental organizations is distinguished from the norms regulating how the entity interacts with the external world, for example, how it concludes various kinds of international agreements.<sup>110</sup> Since the Arctic Council is not an inter-governmental organization, an organization regulated under international law, it also has much more leeway to implement its strategies, which makes many things possible, as will be demonstrated below.

The Council, after receiving a permanent secretariat, is set to strengthen structurally, but this does not mean that the Council itself will be formalized into an inter-governmental organization – something that for instance the Finnish 2013 strategy<sup>111</sup> promotes – or that this is even desirable. In fact, despite the Council's ability to catalyse two treaty processes, it seems to have retained its assessment niche as well as retained the exceptional level of indigenous participation. Moreover, the Arctic Council has also fostered non-state transnational co-operation in the region.<sup>112</sup>

#### 5.1. *Participants: Balancing Arctic States' Ownership and the Involvement of Other Actors*

A clear-cut and much celebrated characteristic of the Arctic Council is its composition, manifested primarily by the presence of indigenous peoples' organizations as permanent participants that can influence the work of the Council.<sup>113</sup> They have to be consulted before any decision is made and they play a major role in initiating and implementing projects. Indigenous

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<sup>110</sup> See in general, C F Amerasinghe, *Principles of the Institutional Law of International Organizations* (2<sup>nd</sup> ed, CUP 2005) .

<sup>111</sup> 'Finland's Strategy for the Arctic Region 2013'. Government resolution on 23 August 2013. Prime Minister's Office, Finland, <vnk.fi/julkaisukansio/2013/j-14-arktinen-15-arktiska-16-arctic-17-saame/PDF/en.pdf> accessed 18 December 2014.

<sup>112</sup> That includes a number of organizations: scientific organizations such as International Arctic Science Committee and International Arctic Social Sciences Association; the Northern Forum (international forum grouping local and regional governments from the North); the University of the Arctic (association of circumpolar research and education institutions); or institutions such as Indigenous Peoples Secretariat, which plays a key role in facilitating participation of indigenous organizations in the Arctic Council, but also in their international co-operation.

<sup>113</sup> Timo Koivurova and Leena Heinämäki, 'The Participation of Indigenous Peoples in International Norm Making in the Arctic,' (2006) 42 *Polar Record* 104; Monica Tennberg, 'Indigenous Peoples Involvement in the Arctic Council' (1996) 4 *Northern Notes* 21.

involvement – extending from working groups up to the ministerial meetings – speaks in favour of soft law inter-governmental co-operation. Such level of participation would be difficult to imagine in the typical international organization set-up. Indigenous presence enhances the legitimacy of the Arctic Council in dealing with environmental issues.<sup>114</sup>

Another characteristic peculiar to the Council is the broad spectrum of observers involved in its work, including non-Arctic states, industrial associations, international bodies and NGOs.<sup>115</sup> Also distinctive in this context is that the same rules for participation in the work of the Council apply to all these categories of observers.<sup>116</sup> The Council is also increasingly opening to actors from the business world. In September 2014, the Arctic Economic Council has been established as a forum for actors in private industry and a venue in which those actors can contribute their perspectives to the work of the Arctic Council.<sup>117</sup>

As a result of its structural flexibility, it is possible within the Arctic Council to combine strong ownership over the Council by the eight Arctic states (i.e. control of Council's work and definition who the key Arctic actors are) with the involvement of other actors into its activities. The key elements of Arctic states' ownership – consensus decision making by all Arctic states and a rotating chairmanship – have been unaffected by the increasing number of observers and by the establishment of Arctic Council secretariat in 2013.

So far, the step-by-step approach to expanding involvement in Council's work has strengthened eight Arctic states' ownership. With consecutive ministerial meetings, additional observers as well as permanent participants were accepted. That was the case until 2008-2009 when the Council was faced with a vast amount of regional and global attention. Before making decisions, Arctic states needed to better define the role of observers and the terms of their

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<sup>114</sup> Indigenous organizations have been able to convey their views on how environmental protection should be carried out in an area in which indigenous people have lived sustainably for ages. Indigenous contributions included traditional knowledge and strengthening of the messages delivered to the public by Council's assessments, legitimizing the environmental protection mandate of the Council.

<sup>115</sup> Kankaanpää, 'The Arctic Council' (n 37).

<sup>116</sup> Ottawa Declaration (n 21) art 3; Arctic Council, 'Revised Arctic Council Rules of Procedures (adopted at the First Arctic Council Ministerial Meeting in Iqaluit, Canada in September 1998, revised at the Eight Arctic Council Ministerial Meeting in Kiruna in May 2013); Arctic Council, Arctic Council Observer Manual For Subsidiary Bodies (Kiruna, 12 May 2013) Senior Arctic Officials Report to Ministers (Kiruna, Sweden, May 12, 2013), <[www.arctic-council.org/index.php/en/document-archive/category/425-main-documents-from-kiruna-ministerial-meeting?download=1780:observer-manual](http://www.arctic-council.org/index.php/en/document-archive/category/425-main-documents-from-kiruna-ministerial-meeting?download=1780:observer-manual)> accessed 18 December 2014, 90–96..

<sup>117</sup> <[www.arctic-council.org](http://www.arctic-council.org)> accessed 18 December 2014.

acceptance. In the meantime, all applicants enjoyed a status of ad-hoc observers. In 2011 at the Nuuk Ministerial meeting, the so-called Nuuk observer rules (role and criteria for observers) were adopted,<sup>118</sup> followed by instructions for engaging observers in the working groups (Observers Manual).<sup>119</sup> Such clarification of the status of observers coupled with the strengthening of Council's structures, allowed in the ministerial meeting in Kiruna in May 2013 to expand Council's observership to major Asian states (China, Japan, South Korea and Singapore).

The Nuuk observer rules have put a demand on observer states to acknowledge the primary role of the Arctic eight in governing both the region and the Arctic Council.<sup>120</sup> Observers' contributions to Arctic Council projects – both initiating and participating in implementation – are limited by the Arctic states' resolve to maintain clear ownership of the Council's work.<sup>121</sup>

## *5.2. Responding to changing international environment: the Arctic Council as a Catalyst for Arctic Specific Hard Law Instruments*

From 2007 onwards, we can observe an increasing international interest in the Arctic and in the Arctic Council itself. The region's entry into the mainstream of high-level politics was primarily prompted by the 2007 sea ice minimum (confirming ACIA's and IPCC's projections), the planting of the Russian flag on the sea bed at the North Pole (connected with the collection of data for that purpose of Russian submission to the Commission on the Limits of Continental Shelf), and the rising interest in economic opportunities in the Arctic (primarily shipping and oil and gas extraction) among global players such as China, India, Japan or Brazil. It can be argued that also the ACIA's dramatic findings contributed to this new global attention to the region. The Arctic Council actors reacted to the new international environment by gradually strengthening

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<sup>118</sup> Arctic Council, Senior Arctic Officials (SAO) Report to Ministers, Nuuk, Greenland, May 2011, <[www.arctic-council.org/index.php/en/document-archive/category/20-main-documents-from-nuuk?download=76:sao-report-to-the-ministers](http://www.arctic-council.org/index.php/en/document-archive/category/20-main-documents-from-nuuk?download=76:sao-report-to-the-ministers)> accessed 18 December 2014, 50-51.

<sup>119</sup> Arctic Council Observer Manual (n 118).

<sup>120</sup> Senior Arctic Officials ((n 118) 50-51; Graczyk and Koivurova, 'A New Era' (n 27).

<sup>121</sup> The financial contribution of the observers to the Arctic Council projects cannot exceed the contribution of the Arctic states. Observers can propose projects only through an Arctic state or permanent participant. See Arctic Council, 'Revised Arctic Council Rules of Procedures (adopted at the First Arctic Council Ministerial Meeting in Iqaluit, Canada in September 1998, revised at the Eight Arctic Council Ministerial Meeting in Kiruna in May 2013) art 38.

this international forum, including the development of legally binding Arctic-specific instruments.

The most evident examples of these legally-binding instruments are the two agreements negotiated under the auspices of the Arctic Council, namely, the 2011 agreement on search and rescue co-operation (one of the key AMSA recommendations)<sup>122</sup> and on marine oil pollution preparedness and response concluded in 2013.<sup>123</sup> Given the possibility of a major accident or oil spill, a legal action going beyond a soft law approach was needed. Moreover, the Arctic states have also been pushing to make the 2009 non-binding Polar Code for shipping a mandatory International Maritime Organization instrument - the action recommended in AMSA.<sup>124</sup> Currently, there is preliminary work being done within the Arctic Council on a possible oil spills prevention agreement or another type of instrument to address the issue, which was, again, recommended by AMSA.<sup>125</sup>

In fact, the Arctic appears to counter the general trend of states seemingly being more reluctant than before to concluding treaties.<sup>126</sup> This is primarily a consequence of the attention currently given to Arctic climate change and its impacts, highlighted in ACIA findings, especially the anticipated increase in various human activities in the region. As a result, there is a heightened focus on the adaptation of Arctic governance to new climate change-driven reality in such areas as Arctic maritime navigation, oil spills or fisheries. The fact that the Arctic Council – at its core a soft law body – was capable to serve as a catalyst for binding agreements shows how its structural flexibility allows it to react to changing international environment within which it functions, displaying the ability for adaptive learning.

## **6. Arctic Council as a Learning Organization**

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<sup>122</sup> SAR Agreement (n 35); PAME (AMSA) (n 39) 6, Recommendation IE.

<sup>123</sup> Oil Spills Agreement (n 35).

<sup>124</sup> PAME (AMSA) (n 39) 6, Recommendation IB.

<sup>125</sup> *ibid*, Recommendation IIF.

<sup>126</sup> The American Society of International Law recently invited papers on "The End of Treaties? An Online Agora", identifying a trend on decreasing importance of treaties, <[www.asil.org/blogs/call-papers-end-treaties-online-agora](http://www.asil.org/blogs/call-papers-end-treaties-online-agora)> accessed 16 December 2014.



The combined effect of the gradual emergence of the epistemic community with the help of the flexible institutional structure of the Arctic Council was that the Council – and especially its working groups – were able to ‘learn by doing’ what worked and what did not.<sup>127</sup> The Council was able to focus increasingly on where it functioned best, namely, on carrying out large-scale assessments on the status, trends and threats to the Arctic environment as well as on human development, including new economic activities taking place in the region. This evolution from normative work towards assessments is the best proof of the Arctic Council developing as a ‘learning organization’.

As indicated by Haas,<sup>128</sup> both the underlying regime and characteristics internal to the organization play a role in the learning process. That is clearly the case in the Arctic Council, evolution of which was influenced by both the international setting of Council’s work (eg international legal developments and changing positioning of the Arctic in international politics) and, internally, the emergence of the extended epistemic community. Both reflexive learning (based on perception of shortcomings of early normative activities) and adaptive learning (occurring due to external pressures, in particular after 2007/2008) can be observed throughout the history of the Arctic circumpolar cooperation.

As a learning organization exhibiting elements of adaptive governance, the Arctic Council, and any other kind of inter-governmental process or organization, needs to face ever-changing political, legal and social forces. Therefore, identifying the niche for the organization should be an on-going process. Herein lies the strength of the Arctic Council at the level of international environmental governance: it can live comfortably in a multi-level governance setting, with soft and hard law, simply because of its flexibility originating from the lack of any formal existence, in particular one created and upheld by international law. The Council, owing to the engagement of its extended epistemic community, translates environmental and other concerns in the Arctic into normative influences on the broader levels of governance since it is primarily at these levels (global, regional or national) where Arctic-relevant regulation and policy-making takes place, albeit seldom with a focus to Arctic-specific concerns. However, as was shown in the cases of the ACIA or protected areas, the assessment work and the extended

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<sup>127</sup> On a broader discussion of learning and change in international organizations see Haas (n 6).

<sup>128</sup> *ibid.*

epistemic community cannot make a tangible difference if the states want to deal with a particular issue in another way, usually via domestic policies or other international processes. This is the lesson of the climate regime, in which the Arctic Council has not been able to exert clear influence in a direct manner. The main channel for the Arctic Council and its extended epistemic community has been to influence the regime indirectly via contributions of Council assessments to the work of the Intergovernmental Panel on Climate Change, as well as the participation therein of the Arctic epistemic community experts.

An example of reflexive learning is the Council's ability to gradually address the shortcomings that scholars, experts and policy-makers have been pointing out. The limited influence of the Arctic Council's guidelines (such as Arctic EIA or Offshore Oil and Gas Guidelines) prompted the Council and its epistemic community to gradually focus on scientific assessments that included also recommendations. The lack of follow-up on the implementation of recommendations is also slowly being addressed, as already discussed in the case of AMSA.

Reflexive and adaptive learning are usually intertwined. The establishment of a permanent secretariat was partly a response to criticism over the lack of institutional memory and organizational routines (including the not always smooth transition between chairmanships) and partly it was an attempt to adapt to an increased international interest in the region. The same can be said of the new attention to Council's communication and visibility, where the Council secretariat and its working groups are committed to a better dissemination of the outcomes of Council's work and to promoting the knowledge about the role and achievements of the Council both within and outside the Arctic.<sup>129</sup>

Ideally, a learning organization is not only an organization that has an enhanced capacity to learn, adapt and change, but also one in which 'learning processes are analysed, monitored, developed, managed, and aligned with improvement and innovation goals'.<sup>130</sup> Here the Arctic Council is at a disadvantage, as limited continuity over time prevents such a self-reflective approach within the organization. There is a possibility that the establishment of the permanent secretariat may facilitate such self-reflection. However, that will depend on how the secretariat positions itself over time and on the attitudes of the Arctic states and other actors towards its

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<sup>129</sup> Arctic Council, 'Communication strategy for the Arctic Council' (February 2012), <[www.arctic-council.org](http://www.arctic-council.org)>

<sup>130</sup> Martha Gephart and others, 'Learning Organizations Come Alive' (1996) 50 Training and Development 36

role. On the other hand, individuals involved in the Arctic Council's work, especially in the major assessments, routinely engage in academic reflection.<sup>131</sup>

Also the different Arctic Council's working groups can learn from each other, for instance regarding increasing focus of working groups' work on scientific assessments or interlinking of their activities with international processes. A good example of the latter is – following the AMAP's success in the case of POPs and mercury – the intensified co-cooperation of the CAFF working group with the secretariats of conventions related to biological diversity. For instance, the Resolution of Co-operation concluded with the Secretariat of the Convention on Biological Diversity<sup>132</sup> improves the possibilities for CAFF to strengthen the implementation of the Convention on Biological Diversity in the Arctic. This aim was encouraged by the Conference of the Parties (COP) of the Convention on Biological Diversity in its 2012 decision XI/6 (also including a section on collaboration on Arctic biodiversity)<sup>133</sup> and made concretely possible by the above-mentioned Resolution of Co-operation. The cooperation materialized, for instance, in CAFF's scientific and technical contribution to the CBD's Arctic regional workshop to facilitate the description of ecologically or biologically significant marine areas.<sup>134</sup> CAFF has also developed co-operation with countries outside the Arctic (including new observers), especially regarding migratory birds.<sup>135</sup>

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<sup>131</sup> See, eg Nilsson (n 88); Kankaanpää and Young, 'The Effectiveness of the Arctic Council' (n 41).

<sup>132</sup> Conservation of Arctic Flora and Fauna, Resolutions on Cooperation <[www.caff.is/resolutions-of-cooperation](http://www.caff.is/resolutions-of-cooperation)> accessed 16 December 2014; and Resolution on Cooperation between the Secretariats of the Convention on Biological Diversity and the Conservation of Arctic Flora and Fauna Working Group (2010) <[www.caff.is/images/\\_Organized/Policy/Resolution%20of%20Cooperation%20between%20CAFF%20and%20the%20CBD.pdf](http://www.caff.is/images/_Organized/Policy/Resolution%20of%20Cooperation%20between%20CAFF%20and%20the%20CBD.pdf)> accessed 16 December 2014.

<sup>133</sup> Convention on Biological Diversity, COP 11 Decision XI/6, Cooperation with Other Conventions, International Organizations and Initiatives (D. Collaboration on Arctic biodiversity), <<http://www.cbd.int/decision/cop/default.shtml?id=13167>> accessed 16 December 2014.

<sup>134</sup> Arctic Regional Workshop To Facilitate The Description Of Ecologically Or Biologically Significant Marine Areas, Helsinki, 3 to 7 March 2014, UNEP/CBD/EBSA/WS/2014/1/5 (20 May 2014), <[www.cbd.int/doc/meetings/mar/ebsaws-2014-01/official/ebsaws-2014-01-05-en.pdf](http://www.cbd.int/doc/meetings/mar/ebsaws-2014-01/official/ebsaws-2014-01-05-en.pdf)> accessed 16 December 2014. See also, Convention on Biological Diversity, COP 10 Decision X/13, X/13. "New and emerging issues" (2013) para 3, <[www.cbd.int/decision/cop/default.shtml?id=12279](http://www.cbd.int/decision/cop/default.shtml?id=12279)> accessed 16 December 2014.

<sup>135</sup> The recent Arctic Migratory Birds Initiative of the CAFF aims at securing agreements and developing joint actions, including the development and implementation of conservation strategies and management plans with Arctic Council observer countries of the flyway (China, Korea, Japan, Singapore and India) as well as other key Southeast Asian countries. See AMAP, Arctic Migratory Birds Initiative <[www.caff.is/arctic-migratory-birds-initiative-ambi](http://www.caff.is/arctic-migratory-birds-initiative-ambi)> accessed 16 December 2014.

The Arctic Council has been criticised for not being able to incorporate the local and regional level well enough in its activities, and also in its assessment work.<sup>136</sup> The Council has for a long time been perceived as a meeting place of diplomats, policy-makers, civil servants and scientists, many of whom live and work in the capitals of the Arctic states. Moreover, the audience of the assessments has comprised the national and global level negotiators rather than local actors. Recent assessment projects have been trying to better involve these levels of governance. The ongoing AACA assessment is here the best example, as it has started to work on regional studies with the involvement of local stakeholders (it remains to be seen how successful this will be).<sup>137</sup>

## **7. Conclusion: Lessons from the Arctic Governance**

We have to be careful in considering the possibility of learning from any regional experience, especially one that has plainly been influenced by region-specific developments, as is the case with Arctic circumpolar cooperation. However, owing to its flexible institutional design and the extended epistemic community that has grown around it, the Arctic Council can not only influence broader levels of environmental governance (as was the case with POPs, mercury and even, less directly, climate regime), but also displays a number of characteristics that may prove inspirational for other regions.

The key lesson we want to emphasize in this article is that regional organizations positioned in-between the local, national and international decision-making processes – a complex and dynamic normative landscape – have to engage in ongoing learning and display elements of adaptive governance. That means a form of governance that will continually search for its niche and be able to navigate various other levels of governance and soft and hard law instruments and arrangements. The learning should apply not only to the modes of work, but also to the structure of the co-operation. It is also crucial that actors involved in co-operation are able to acknowledge its shortcomings and critically assess their own practices.

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<sup>136</sup> Waliul Hasanat, *Soft Law Cooperation in International Law: The Arctic Council's Efforts to Address Climate Change*, (Acta Universitatis Lapponiensis 234, Lapland UP 2012); Sebastien Duyck, 'Participation of Non-State Actors in Arctic Environmental Governance' (2012) 40 *Nordia Geographical Publications* 99.

<sup>137</sup> AMAP (Arctic Monitoring and Assessment Programme), 'Adaptation Actions for Changing Arctic (AACA) Section C: AMAP proposed Work Plan for completion by 2017, <[www.arctic-council.org](http://www.arctic-council.org)> accessed 16 December 2014.

Learning process may be facilitated by the flexibility regarding of modes of work and structure, and a certain degree of informality of co-operation— characteristics of the Arctic Council as a loose intergovernmental forum. The Arctic Council has retained its flexible nature from the 1991 AEPS onwards, as the Cold War history between the Arctic states made the institutional design based on flexibility and soft law instruments particularly appropriate. On the other hand it is this flexibility that allows the Arctic Council as a soft law based organization to also use legally binding instruments, as was the case with search and rescue and oil spills agreements.

A key element of the flexible structure and operation of the Arctic Council is the delicate balance between strong state ownership of the regional governance and the involvement of other actors. The role of indigenous organizations in their capacity as permanent participants and the lack of distinguishing between state and non-state observers deserve particular attention. However, the long deliberation over the inclusion of observers into the Council's work between 2008 and 2013 shows how difficult the ongoing process of striking such a balance is.

What has been the outcome of the learning process in the case of the Arctic Council? Large-scale science-based assessments appear to be the type of policy-shaping instruments the Arctic Council is best in producing. The focus on these policy-shaping tools, the way they are conducted (including interlinkages with global normative processes) and the development of an epistemic community (that enhances the chances for such assessments to be influential and effective) constitute important lessons for other venues of regional governance in their own right. Utilizing such science-based assessments not only as a direct means of policy influence but also for building a common understanding of threats and indicative solutions to these threats (also for actors from outside of the region) is a useful niche for regional organizations. As the Arctic has emerged into global policy arenas, we may expect the continuation of the process of organizational learning.

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